

<b>Compliance Board Opinion No. 01-19</b>
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October 24, 2001

*Ms. Michele J. Fluss*

The Open Meetings Compliance Board has considered your complaint that the Carroll County Plumbing Advisory Board (hereafter “Plumbing Board”) violated the Open Meetings Act. Specifically, you alleged three separate violations: (1) that the Plumbing Board prepared inadequate minutes of its April 12, 2001, meeting; (2) that the Plumbing Board met for a previously unscheduled meeting on May 17, 2001, without giving reasonable advance notice; and (3) that the Plumbing Board failed to give public notice of the cancellation of two meetings.

In a timely response, the Plumbing Board admitted violations in connection with your first two allegations and indicated that changes are being made to ensure future compliance. As to your third allegation, the Plumbing Board denied a violation of the Act, contending that the cancellations occurred prior to public notice of the meetings. For the reasons explained below, we agree that no violation occurred with respect to the cancellations.

**I**

**Complaint and Response**

Your first allegation was that the minutes of the Plumbing Board’s April 12, 2001, meeting failed to reflect the Plumbing Board’s recommendation to the Board of County Commissioners in connection with a proposed plumbing code amendment.<sup>1</sup> In support of your allegation, you provided us with a copy of the minutes of the April 12 meeting as well as copies of correspondence between the County’s Attorney’s Office and an Assistant Attorney General at the Department of Labor, Licensing and Regulation in connection with this matter. The minutes summarize the discussion of the Plumbing Board on this matter but do not explicitly state what final action was taken. Nor do the minutes reflect any vote.

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<sup>1</sup> The proposed amendment concerned the installation of thermal expansion devices. The substance of the proposed amendment is immaterial to the Open Meetings Act question.

In a response on behalf of the Plumbing Board, Kimberly A. Millender, Acting County Attorney, and Isaac Menasche, Assistant County Attorney, explained that the Plumbing Board reached a decision, by consensus, to recommend that the County Commissioners adopt certain State requirements. The Plumbing Board admitted that the minutes were not as comprehensive as the Act requires and set forth changes that will be implemented in order to ensure future compliance.

The second allegation related to a Plumbing Board meeting conducted on May 17, 2001, without notice to the public. You learned of this meeting after the fact when requesting minutes of the April 12 meeting. The May 17 meeting was not listed in a memorandum from the County Bureau of Permits and Inspections to members of the Plumbing Board setting forth “regularly scheduled meetings” of the Plumbing Board during 2001. You indicated that a representative of the County Commissioners’ Office confirmed that the Plumbing Board had not submitted notice of the May 17 meeting to that office. Had the Plumbing Board done so, apparently the notice would have been included in an announcement issued by the County to media representatives and others, posted on the County’s website, and posted on a public bulletin board at the County’s information desk. This bulletin board, according to the response, is “the county’s customary place for posting meetings of boards, commissions, and committees.” Your complaint contended, however, that the Plumbing Board never designated the information desk “as its customary posting place.” Citing §10-506(c)(3),<sup>2</sup> you apparently questioned whether this location is a “convenient public location at or near the place of the session,” in light of the fact that the Plumbing Board’s previous meeting occurred at a location “2.9 miles/ten minutes” away. You also questioned whether the subject of the May 17 meeting constituted a matter requiring the “immediate attention” of the Plumbing Board. Finally, you indicated that a review of *The Sun* and *Carroll County Times* newspapers revealed no announcement of the meeting.

In its response, the Plumbing Board outlined its normal process of scheduling meetings and providing notice. In October, a staff member selects meeting dates for the upcoming year; the dates are then forwarded to the County’s Administrative Coordinator, who enters them on a master calendar. A week prior to a scheduled meeting, the Administrative Coordinator confirms that the meeting is still scheduled. Assuming that the meeting is still scheduled at that point, she produces a notice of the meeting that is distributed to media contacts, posted on the County’s website, and posted on a bulletin board in the County Commissioners’ Office. These notices are updated as needed. However, the Plumbing Board admitted that notice of the May 17, 2001, meeting never reached the Administrative Coordinator, owing to an “administrative oversight.” The Plumbing Board also indicated that measures have

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<sup>2</sup> All statutory references are to the Open Meetings Act, Title 10, Subtitle 5 of the State Government Article, Annotated Code of Maryland.

been taken to ensure compliance with the notice requirements of the Act in the future.

Your third allegation involved the failure to give notice of cancellations of meetings that had previously been scheduled for January 11 and July 12, 2001. You learned of the cancellations by calling the County Bureau of Permits and Inspections several days in advance of each meeting. You questioned why the cancellation was not posted on the County's website. You were informed that cancellation notices are not posted on the website unless meeting notices had previously been posted. You also indicated that a review of two newspapers failed to reveal publication of cancellation notices.

In its response, the Plumbing Board acknowledged that cancellation notices were not provided in connection with these meetings but denied that there was a violation of the Act. Because notice of these meetings was never disseminated to the public, the Plumbing Board contended, cancellation notices were not required.<sup>3</sup>

## II

### Discussion

#### *A. Minutes of April 12, 2001 Meeting*

The Open Meetings Act requires a public body like the Plumbing Board to have written minutes prepared for each meeting that is subject to the Act. §10-509(b). The minutes must reflect each item that the public body considered, the action taken on each item, and each recorded vote. §10-509(c)(1). As the Attorney General has explained, each item must be described in sufficient detail so that a member of the public who examines the minutes can understand the issue under consideration. Office of the Attorney General, *Open Meetings Act Manual* 21 (4<sup>th</sup> ed. 2000). These are minimal requirements; the Act does not preclude whatever additional information the public body chooses to include. §10-509(a)(2); Compliance Board Opinion 01-5 (February 22, 2001), slip op. at 3.

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<sup>3</sup> We note that you submitted a reply to the Plumbing Board's response by letter dated September 24, 2001. Because we felt that sufficient information was available to reach a decision, we did not invite further comment from the Plumbing Board. In your supplemental letter, you also raised an additional issue: whether a provision in the Plumbing Board's by-laws is inconsistent with the Open Meetings Act in that the by-laws permit secret ballots. Because your letter failed to identify any specific meeting at which the Plumbing Board's reliance on the by-laws may have resulted in a violation, and therefore we cannot assess whether the Open Meetings Act would have applied to the matter under consideration, we decline to address this issue in the abstract.

In its response, the Plumbing Board indicated that its decision regarding the plumbing code amendment was reached through consensus rather than formal vote. As we have previously recognized, the Act is “not an enemy of consensus.” *Id.*, citing Compliance Board Opinion No. 96-2 (March 4, 1996), *reprinted in 1 Official Opinions of the Maryland Open Meetings Compliance Board* 155. The minutes may simply reflect “unanimous consent for an action” in lieu of a recorded vote, provided that the minutes reflect those members present. Implicit in this kind of record is that each member present supported the body’s action. Of course, should any member abstain or vote against the action, the minutes must reflect this fact. Compliance Board Opinion 01-5, slip op. at 3. Following approval by the body, open meetings minutes are public records, available for public inspection during ordinary business hours. §10-509(d); Compliance Board Opinion 98-3 (May 12, 1998), *reprinted in 2 Official Opinions of the Maryland Open Meetings Compliance Board* 11, 13.<sup>4</sup>

The Plumbing Board has acknowledged that the minutes of the April 12 meeting fail to contain all of the elements required by the Act, and thus the Act was violated. We note with approval the Plumbing Board’s action in instructing its secretary to modify the manner that minutes are recorded to ensure future compliance. This delegation, however, does not relieve the Plumbing Board of its ultimate responsibility to assure that legally sufficient minutes are approved. *See, e.g.*, Compliance Board Opinion 98-3, at 13.

**B. Failure to Give Notice**

Your second allegation was that the Plumbing Board conducted a meeting on May 17, 2001, without providing notice of the meeting to the public.

The Open Meetings Act requires a public body to give “reasonable advance notice” of an open or closed meeting that is subject to the Act. §10-506(a). In its response, the Plumbing Board acknowledged that notice was not provided. Hence, the Act was violated. The Plumbing Board also outlined steps it has taken to ensure that staff provide proper notice in the future.

Because we have recently reviewed notice requirements at some length, *see* Compliance Board Opinion 01-17 (August 8, 2001), slip op. at 6-7, we see no need to repeat that analysis here, especially in light of the Plumbing Board’s response. Like responsibility for minutes, ultimate responsibility for giving notice is vested in the public body. §10-506(a). Hence, a public body should have in place a method of confirming that proper notice had in fact been given. *See* Office of the Attorney

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<sup>4</sup> The Open Meetings Act imposes additional requirements in connection with minutes recorded as part of a meeting closed to the public under the Act. *See* §10-509(c)(2) - (4); *see also* Compliance Board Opinion 01-5, slip op. at 4.

General, *Open Meetings Act Manual* Appendix B (“Compliance Checklist”) (4<sup>th</sup> ed. 2000).

In your complaint, you addressed at some length the fact that the Plumbing Board had not formally designated the County information desk as the location where meeting notices will be posted and questioned the proximity of the location to the site of the Plumbing Board’s meetings. The Open Meetings Act, however, grants public bodies significant flexibility in the method of giving written notice. Indeed, “any reasonable method” will suffice. §10-506(c)(4). There is no doubt that had the routine process been followed in connection with the May 17 meeting, the notice provided would have been deemed reasonable.

You also questioned whether, given the topic, the Plumbing Board had a genuine need to conduct a previously unscheduled meeting. Unless another law outside of the Open Meetings Act restricts when a public body might meet, the public body is entitled to schedule a meeting whenever it considers doing so necessary for the conduct of public business. Compliance Board Opinion 01-12 (June 28, 2001), slip op. at 4, *citing* Compliance Board Opinion 99-3 (April 6, 1999), *reprinted in 2 Official Opinions of the Maryland Open Meetings Compliance Board* 39, 41. Absent some evidence that an announcement was deliberately delayed in order to suppress public attendance, we decline to second guess, based on the topic of discussion, a public body’s decision to schedule a meeting on short notice.

### **C. Canceled Meetings**

Your final allegation concerned two dates that were originally set aside for meetings of the Plumbing Board. As it turned out, these meetings were not conducted. Although you learned about the cancellation by contacting staff in the Bureau of Permits and Inspections several days before the dates selected for the meetings, you alleged that the Plumbing Board violated the Act by failing to notify the public of the cancellations. The dates in question, January 11 and July 12, 2001, were noted in a memorandum from a staff member with the Bureau of Permits and Inspections, addressed to the members of the Plumbing Board, dated October 11, 2000.<sup>5</sup> The Plumbing Board’s position is that notice of cancellation was not

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<sup>5</sup> The memorandum, captioned “2001 Carroll County Plumbing Advisory Board Meetings Dates” read in part:

Listed below you will find the dates of the regularly scheduled meetings of the Carroll County Plumbing Advisory Board. If you have any questions, please do not hesitate to contact me at ...

(continued...)

required because no notice of either meeting was ever published. In your reply to the Plumbing Board's response, you noted that the memorandum listing meeting dates was provided to you at your request by a County staff member. You also pointed out that in December 2000, County staff informed you of the two meeting dates. At no time did the County staff member suggest that the dates were tentative.

The Open Meetings Act does not expressly address the cancellation of a meeting of a public body. Nevertheless, as we have previously recognized, "[i]mplicit in the Act's requirement of notice of 'the date, time, and place of the session,' ... is the requirement that the public be notified of changes in those facts, including the fact that a previously scheduled meeting had been canceled." Compliance Board Opinion 96-11 (November 5, 1996), *reprinted in 1 Official Opinions of the Maryland Open Meetings Compliance Board* 186, 189. See also Compliance Board Opinion 01-3 (February 1, 2001), slip op. at 3 ("If a public body provides notice and then some material element about the meeting – that is, its date, time, place, and closed or open status – changes, the public body is required to issue a revised notice."). Thus, the question we must consider is whether the Plumbing Board in fact provided notice through release of the memorandum or information provided by staff that triggered an obligation to publish a notice of cancellation.

We find it significant that the memorandum was addressed to the members of the Plumbing Board rather than the public. There is no indication that the notice was posted for the public's view. The fact that a County staff member provided a copy of the memorandum to you does not transform the memorandum into a public notice for purposes of the Open Meetings Act.<sup>6</sup> While it might have been preferable had the dates in the memorandum been identified as tentative, release of the memorandum to one individual did not obligate the Plumbing Board to publish notice of a cancellation of a meeting, since the meeting was never announced in accordance with the Act.

The remaining question concerns information provided to you, and possibly to others, by County staff members in response to telephone inquiries concerning meetings of the Plumbing Board. Because the Plumbing Board had not yet given official notice of the meetings in accordance with the Open Meetings Act, hindsight suggests that the staff should have indicated that the information was tentative.

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<sup>5</sup> (...continued)

Thursday, January 11, 2001 @ 8:00 a.m.  
Thursday, April 12, 2001 @ 8:00 a.m.  
Thursday, July 12, 2001 @ 8:00 a.m.  
Thursday, October 11, 2001 @ 8:00 a.m.

<sup>6</sup> Presumably, the County had no basis under the Maryland Public Information Act to deny you access to the memorandum.

However, because responses to telephone inquiries alone could not constitute notice for purposes of the Act, public notice of the cancellation was not required.

We therefore agree with the Plumbing Board that, because public notice of the meetings in question had not yet been provided in accordance with the Act, the Plumbing Board was not obligated to follow the Act's notice requirements for the cancellation of the meetings.

### **III**

#### **Conclusion**

The Plumbing Board has candidly acknowledged, and we find, two violations of the Open Meetings Act: that the minutes of the April 12, 2001, meeting did not comply with the Act and that the Plumbing Board failed to give notice of the May 17 meeting. We note with approval the Plumbing Board's appropriate corrective action to attain future compliance. Finally, we find that the Plumbing Board did not violate the Act by failing to give notice of the cancellation of meetings on January 11 and July 12, 2001.

OPEN MEETINGS COMPLIANCE BOARD

*Walter Sondheim, Jr.*  
*Courtney McKeldin*  
*Tyler G. Webb*